

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Final Office Action dated May 17, 2009. Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1-38 are pending in the Application. Claims 1, 36 and 38 are independent claims.

In the Final Office Action, claims 1-38 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. This rejection of claims 1-38 under 35 U.S.C. §112, first paragraph is respectfully traversed. However, in the interest of expediting consideration and allowance of the pending claims, the Applicants have elected to amend the claims to eliminate the term "only" from the claims. Accordingly, it is respectfully requested that that this rejection of claims 1-38 under 35 U.S.C. §112, first paragraph, be withdrawn.

In the Final Office Action, claims 1-10, 13-15 and 17-37 are rejected under 35 U.S.C. §103(a) over U.S. Patent No. 3,725,658 to Stanley ("Stanley") in view of U.S. Patent No. 4,914,720 to Knodle ("Knodle"). Claims 11 and 12 are rejected under 35 U.S.C. §103(a) over Stanley in view of Knodle and in further view of U.S. Patent No. 4,849,172 to Yafuso ("Yafuso"). Claim 16 is rejected under 35 U.S.C. §103(a) over Stanley in view of Knodle and in further view of U.S. Patent No. 4,861,727 to Hauenstein ("Hauenstein"). Claim 38 is rejected under 35 U.S.C. §103(a) over Stanley in view of Knodle in further view of U.S. Patent No. 5,315,993 to Alcalá ("Alcalá").

These rejections are respectfully traversed. It is respectfully submitted that claims 1-38 are allowable over Stanley in view of Knodle or Alcala alone and in any combination with Yafuso and Hauenstein for at least the following reasons.

Although the position of the alleged "intended use" of the claim language is respectfully refuted, the Applicants have elected to amend the claims to address the alleged intended use limitations. In particular, claim 1 recites, "a transducer comprising a radiation source oriented toward the luminescable element to emit at least one wavelength of first electromagnetic radiation for exciting the luminescable composition to emit at least one wavelength of second electromagnetic radiation". Thus, it is respectfully submitted that the above claim recitation is not anticipated or made obvious by Stanley since Stanley does not teach, disclose, or suggest (a) a radiation source oriented toward the luminescable element, as the luminescable element does not exist in Stanley as explained in greater detail below. As such, it is clear that Stanley does not teach, disclose or suggest "exciting the luminescable composition to emit at least one wavelength of second electromagnetic radiation" as for example recited in claim 1 (see, the Final Office Action, page 5, lines 11-13).

Claim 1 is further amended in view of the position stated at page 10, lines 1-2 of the Final Office Action. Claim 1 recites "a respiratory flow component comprising an aperture for removably retaining a luminescable element and a luminescable composition". Support for this claim recitation is found in the specification of the present application at least at paragraphs [0081] and [0082] as well as at portions related to FIGs. 6 and 7 and the discussion related thereto.

In the embodiments shown in Stanley's FIG. 2, Stanley shows a tube 24 coated on its inside surface with a sensor film 25. In contrast with Stanley, claim 1 recites "a respiratory flow component comprising an aperture for removably retaining a luminescable element and a luminescable composition". Independent claims 36 and 38 include similar recitations. In other words, as illustrated in the present application, such as FIGs. 6 and 7, the luminescable composition and luminescable element are separately, removably placed, e.g., not glued, painted, or coated as in Stanley, on an aperture, which is missing in Stanley. It is respectfully submitted that no teaching, disclosure, or suggestion of this is found in Stanley.

Knodle, in FIGs. 7 and 8 shows apertures 74 and 76, which are described to be "sealed by sapphire windows 80 and 82" so as not to absorb the infrared radiation (see, Knodle, col. 10, lines 31-38). Thus, Knodle similarly teaches away from "an aperture for removably retaining a luminescable element and a luminescable composition"

Furthermore, it is undisputed that Stanley does not teach, disclose or suggest "the respiratory flow component is adapted to be removably securable to the transducer in a correct orientation" (see, the Final Office Action, page 5). Knodle is cited to provide that which is admitted missing from Stanley, however, it is respectfully submitted that reliance on Knodle is misplaced. As is clear from a simple examination of Knodle, the airway adapter 28 can fit into the transducer head 26 in either of two ways and therefore, Knodle does not teach, disclose or suggest that the respiratory flow component is (illustrative emphasis added) "removably securable to the transducer in a single correct orientation". In accordance with claim 1, the radiation source in the

transducer is oriented toward the luminescable element in the single aperture of the respiratory flow component. Knodle in fact utilizes two apertures.

Alcala is introduced for allegedly teaching the decay times characteristics and does not remedy the deficiencies in Stanley and Knodle.

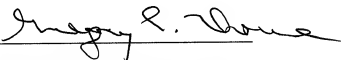
It is respectfully submitted that claim 1 is not anticipated or made obvious by the teachings of Stanley and Knodle. For example, Stanley in view of Knodle do not teach, disclose or suggest, amongst further patentable elements, (illustrative emphasis added) "a respiratory flow component comprising an aperture for removably retaining a luminescable element and a luminescable composition; and a transducer comprising a radiation source oriented toward the luminescable element to emit at least one wavelength of first electromagnetic radiation for exciting the luminescable composition to emit at least one wavelength of second electromagnetic radiation, wherein the respiratory flow component is adapted to be removably securable to the transducer in a single correct orientation" as recited in claim 1, and as similarly recited in each of amended claims 36 and 38. Yafuso and Hauenstein are introduced for allegedly showing elements of the dependent claims and as such, do nothing to cure the deficiencies of Stanley in view of Knodle and Alcala.

Based on the foregoing, the Applicants respectfully submit that independent claims 1, 36 and 38 are patentable and notice to this effect is earnestly solicited. Claims 2-35 and 37 respectively depend from one of the independent claims and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims.

In addition, Applicants deny any statement, position, or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicants have made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

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